

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

OMAR MARTIN,

Plaintiff,

v.

KNIGHT, et al.,

Defendants.

No. 1:22-cv-01582-ADA-BAM (PC)

ORDER GRANTING PLAINTIFF'S MOTION  
TO WITHDRAW MAGISTRATE JUDGE  
CONSENT

(ECF No. 13)

Plaintiff Omar Martin is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint on December 9, 2022. (ECF No. 1.) On December 30, 2022, Plaintiff indicated his consent to proceed before a United States Magistrate Judge for all purposes, including trial and entry of judgment. (ECF No. 4.) On January 23, 2023, the Court received a motion from Plaintiff, dated January 16, 2023, seeking to withdraw Magistrate Judge consent. (ECF No. 13.) In that motion, Plaintiff claims that he mistakenly checked the wrong box on the Court's consent form and repeatedly asserts that he did not intend to consent. (*Id.*) The Court received this motion before ordering service of the complaint on Defendant and before receiving notice about Defendant's position on consenting or declining magistrate judge jurisdiction.

Litigants in federal court are entitled to have their cases determined by Article III district judges. *Pacemaker Diagnostic Clinic of Am., Inc. v. Instromedix, Inc.*, 725 F.2d 537, 541 (9th

1 Cir. 1984). When both parties consent to the jurisdiction of a magistrate judge, however, they  
2 forfeit their right to review by the district judge. *See Branch v. Umphenour*, 936 F.3d 994, 1001  
3 (9th Cir. 2019); 28 U.S.C. § 636(c)(1). “There is no absolute right, in a civil case, to withdraw  
4 consent to trial and other proceedings before a magistrate judge.” *Dixon v. Ylst*, 990 F.2d 478,  
5 480 (9th Cir. 1993). Once both parties have consented, therefore, the district court can vacate  
6 consent to the magistrate judge’s jurisdiction under two circumstances: (1) on the court’s own  
7 motion for good cause shown; or (2) on motion by a party demonstrating extraordinary  
8 circumstances. 28 U.S.C. § 636(c)(4). A party need not, however, “satisfy the good cause or  
9 extraordinary circumstances standard provided in § 636(c)(4) in order to withdraw magistrate  
10 judge consent before all parties have consented.” *Gilmore v. Lockard*, 936 F.3d 857, 863 (9th  
11 Cir. 2019). In such cases, whether to grant a request to withdraw consent is within the discretion  
12 of the district court. *Id.*

13 Because Defendant has yet to file a consent/decline form, the Court finds it appropriate to  
14 grant Plaintiff’s motion to withdraw consent. Plaintiff has diligently pursued this matter and, in  
15 fact, filed his consent form more than two weeks before it was due. (*See* ECF No. 2 docket text  
16 (“Consent or Decline due by 1/16/2022.”); ECF No. 4 (consent form dated 12/27/22).) Moreover,  
17 Plaintiff’s desire to withdraw consent does not follow an adverse ruling from the Magistrate  
18 Judge. *Cf. McNeely v. Chappell*, No. 2:12-cv-0931-EFB P, 2013 WL 4004526, at \*2 (E.D. Cal.  
19 Aug. 5, 2013) (holding it particularly inappropriate to permit withdrawal of consent “where the  
20 withdrawal attempt occurs after the party has received an adverse ruling on a motion”). While the  
21 Magistrate Judge’s screening order noted deficiencies in Plaintiff’s complaint, Plaintiff had  
22 already placed his motion to withdraw consent in the mail before receiving that order. (*See* ECF  
23 Nos. 12, 13.) The Court, therefore, has little reason to doubt the sincerity of Plaintiff’s claim that  
24 he mistakenly checked the wrong box on the consent form. Finally, it is still early in the  
25 proceedings and granting Plaintiff’s motion will neither prejudice Defendant nor inconvenience  
26 the Court. *See Gilmore*, 936 F.3d at 864.

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Accordingly,

1. Plaintiff's motion to withdraw magistrate judge consent, (ECF No. 13), is granted;
2. Plaintiff's previously filed consent/decline form, (ECF No. 4), is vacated;
3. The Clerk of Court is directed to mail a new blank consent/decline form to Plaintiff; and
4. Plaintiff shall complete and return the new consent/decline form within thirty (30) days of his receipt of that form.

IT IS SO ORDERED.

Dated: September 11, 2023

  
UNITED STATES DISTRICT JUDGE